

Part 2

Alternative Dispute Resolution

63G-5-201 Alternative dispute resolution -- Authorization -- Procedures -- Agency coordinators -- Contracts.

- (1) An agency may use an ADR procedure to resolve any dispute, issue, or controversy involving any of the agency's operations, programs, or functions, including formal and informal adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy development, and contract administration only with the consent of all the interested parties.
- (2)
 - (a) An agency may develop and adopt an ADR procedure governed by rules, adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (b) In developing and adopting an ADR procedure under Subsection (2)(a), an agency shall consider:
 - (i) public interest in maintaining open access to and neutrality of an ADR provider or neutral;
 - (ii) providing a broad selection of ADR providers or neutrals; and
 - (iii) creating objective criteria for an ADR provider or neutral to become qualified to conduct an agency ADR procedure.
- (3) ADR procedures developed and used by an agency must be consistent with the requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (4) ADR procedures are voluntary and may be used:
 - (a) at the discretion of the agency; or
 - (b) with an agency that has adopted an ADR procedure under Subsection (2), at the request of an interested party to a dispute.
- (5) An agency that chooses to use an ADR procedure shall develop an agreement with interested parties that provides:
 - (a)
 - (i) for the appointment of an ADR provider or a neutral;
 - (ii) whose appointment is agreed upon by all parties to the dispute;
 - (b) specifies any limitation periods applicable to the commencement or conclusion of formal administrative or judicial proceedings and, if applicable, specifies any time periods that the parties have agreed to waive; and
 - (c) sets forth how costs and expenses shall be apportioned among the parties.
- (6)
 - (a) An ADR provider or neutral agreed upon in Subsection (5) shall have no official, financial, or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed in writing to all of the parties and all of the parties agree that the person may continue to serve.
 - (b) An agency may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop standards to assure the neutrality of an ADR provider or neutral.
- (7) An agreement developed in accordance with Subsection (5) may be included in an enforcement order, stipulation, contract, permit, or other document entered into or issued by the agency.
- (8)
 - (a) The administrative head of an agency may designate an employee as the ADR coordinator for that agency.
 - (b) The agency ADR coordinator shall:

- (i) make recommendations to the agency's executive staff on issues and disputes that are suitable for alternative dispute resolution;
 - (ii) analyze the agency's enabling statutes and rules to determine whether they contain impediments to the use of ADR procedures and suggest any modifications;
 - (iii) monitor the agency's use of ADR procedures;
 - (iv) arrange for training of agency staff in ADR procedures; and
 - (v) provide information about the agency's ADR procedures to the agency's staff and to the public.
- (9) In order to implement the purposes of this chapter, an agency may employ or contract with a neutral, an ADR provider, an ADR organization, another agency, or a private entity for any service necessary on a case-by-case basis, on a service basis, or on a program basis.
- (10) ADR procedures developed and used under this chapter are subject to the confidentiality requirements of Section 78B-6-208.

Amended by Chapter 3, 2008 General Session

Renumbered and Amended by Chapter 382, 2008 General Session